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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2008 375

SCOTT DAVID MUNSON
726 VINO COURT
LOS BANOS, CA 93635

STATEMENT OF ISSUES

Applicant/Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 20, 2008, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from Scott David Munson (Respondent). On or about May 1, 2008, Scott David Munson certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on September 24, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter."

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2

1 (commencing with Section 500).”

2 8. Section 3752 of the Code states:

3 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
4 made to a charge of any offense which substantially relates to the qualifications,
5 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
6 the meaning of this article. The board shall order the license suspended or revoked, or
7 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section
10 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
11 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
12 accusation, information, or indictment.”

13 9. California Code of Regulations, title 16, section 1399.370, states:

14 “For the purposes of denial, suspension, or revocation of a license, a crime
15 or act shall be considered to be substantially related to the qualifications, functions
16 or duties of a respiratory care practitioner, if it evidences present or potential
17 unfitness of a licensee to perform the functions authorized by his or her license or
18 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
19 acts shall include but not be limited to those involving the following:

20 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
21 abetting the violation of or conspiring to violate any provision or term of the Act.

22 “(c) Conviction of a crime involving driving under the influence or reckless
23 driving while under the influence.”

24 COST RECOVERY

25 10. Section 3753.5, subdivision (a) of the Code states:

26 “In any order issued in resolution of a disciplinary proceeding before the
27 board, the board or the administrative law judge may direct any practitioner or applicant
28 found to have committed a violation or violations of law to pay to the board a sum not to

1 exceed the costs of the investigation and prosecution of the case."

2 11. Section 3753.7 of the Code states:

3 "For purposes of the Respiratory Care Practice Act, costs of prosecution
4 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
5 other administrative, filing, and service fees."

6 12. Section 3753.1 of the Code states:

7 "(a) An administrative disciplinary decision imposing terms of probation
8 may include, among other things, a requirement that the licensee-probationer pay the
9 monetary costs associated with monitoring the probation."

10 FIRST CAUSE FOR DENIAL OF APPLICATION

11 (Substantially-related convictions)

12 13. Respondent's application is subject to denial under code sections
13 3750(d), 3750(g), 3752 [substantially related conviction] and CCR 1399.370(a) and (c) in
14 that he has two alcohol-related convictions. The circumstances are as follows:

15 2007 conviction

16 14. On or about April 23, 2007, respondent was convicted of violating
17 Vehicle Code section 23103.5 [wet/reckless driving.] The circumstances are as follows:

18 15. On or about December 5, 2006, California Highway Patrol Officer
19 J. Lopez responded to a call regarding a possibly intoxicated subject. He observed a
20 vehicle driven by a male (later identified as respondent) driving westbound on the highway
21 towards Los Banos, California. Officer Lopez observed that the vehicle was weaving
22 about three to four feet to each side of the lane. He positioned his marked patrol vehicle
23 directly behind the respondent's vehicle, and activated his emergency lights and siren to
24 stop respondent. Respondent was traveling at about ten miles per hour, and continued
25 weaving, then came to a stop.

26 16. Officer Lopez contacted respondent through the open driver's
27 window. He smelled a strong odor of alcohol coming from the interior of respondent's
28 car. He ordered respondent to turn off his car and exit the vehicle, but respondent did not

1 comply. Officer Lopez again ordered respondent out of his car, and respondent placed his
2 car in park and began fumbling with items in his pockets. Officer Lopez opened the
3 driver's side door and again ordered respondent out of the car, but respondent did not
4 make any attempt to exit. Officer Lopez had to assist respondent out of the car, and he
5 immediately determined that respondent was unable to stand without assistance, and was
6 too intoxicated to attempt any field sobriety tests at that location. Officer Lopez arrested
7 respondent for violating Vehicle Code sections 23152(a) [driving under the influence of
8 alcohol and/or drugs] and section 23152(b) [driving while having .08% or more alcohol
9 content].

10 17. After arresting respondent, Officer Lopez advised respondent of his
11 Miranda rights, but it did not appear that respondent understood him. Officer Lopez
12 administered a preliminary alcohol screening (PAS) test, and the results showed an alcohol
13 content of .09%/.09%; however, respondent showed signs and symptoms of extreme
14 intoxication.

15 18. On or about February 1, 2007, a criminal complaint titled *People of*
16 *the State of California vs. Scott David Munson*, case no. LB84681 was filed in Superior
17 Court, Merced County. Count 1 charged respondent with a violation of Vehicle Code
18 section 23152(a) [driving under the influence of alcohol and/or drugs] and Count 2
19 charged respondent with a violation of Vehicle Code section 23152(b) [driving while
20 having .08% or more alcohol content]. It was further alleged that respondent had a prior
21 conviction on August 8, 2002.

22 19. On or about April 23, 2007, respondent entered a plea of nolo
23 contendere to violating an amended charge of Vehicle Code section 23103.5 (wet/reckless
24 driving which was stipulated to be a lesser included offense within Count 2) and he
25 admitted the prior conviction. The remaining counts were dismissed. He was placed on
26 five years probation, ordered to pay fines, serve sixty days in jail, his driving privileges
27 were restricted to driving to and from school, and ordered to attend a SB 38 alcohol
28 program.

2002 conviction

20. On or about August 8, 2002, respondent was convicted of violating Vehicle Code section 23152(b) [driving while having .08% or more alcohol content]. The circumstances are as follows:

21. On or about May 11, 2002, at about 12:16 a.m., Gilroy Police Officer J. Crivello was on traffic patrol in a marked police vehicle. He observed a vehicle driven by a male (later identified as respondent) run two red lights. He activated his emergency lights and conducted a vehicle stop. Officer Crivello observed respondent in the driver's seat. Respondent's eyes were bloodshot, and a moderate odor of alcohol was on his person. Officer Crivello asked respondent to step out of the vehicle, and as he did so, Officer Crivello observed respondent sway about one foot in all directions while walking. Respondent admitted that he drank "two shots of tequila" earlier that evening.

22. Officer Crivello administered a series of field sobriety tests (FSTs) to respondent. Based on his poor performance, Officer Crivello believed that respondent was under the influence of alcohol. He then administered a preliminary alcohol screening (PAS) test, which showed respondent had an alcohol content of .157% at 12:26 a.m. and an alcohol content of .0151% at 12:28 a.m.

23. Based on respondent's driving, poor performance on the FSTs, and PAS test results, Officer Crivello arrested respondent for violating Vehicle Code section 23152(b) [driving while having .08% or more alcohol content.] After arresting him, Officer Crivello transported respondent to the station house where he submitted to a breath test. At 12:59 a.m., respondent's test results indicated an alcohol content of .15%/.15%.

24. On or about August 8, 2002, in *People of the State of California vs. Scott David Munson*, case no. FF200034 filed in Superior Court, Santa Clara County, respondent was convicted on his plea of guilty to a violation of Vehicle Code section 23152(b) [driving while having .08% or more alcohol content.] He was placed on court probation for three years, ordered to pay fines, serve six days in jail with credit for one day, and ordered to enroll in a First Offender Alcohol Program within twenty one days of

1 sentencing. His driving license was restricted for ninety days to driving: to work, to his
2 alcohol treatment program, and to pick up his child from school/day care.

3 25. Therefore, respondent's application is subject to denial based on his
4 two alcohol-related convictions, which are in violation of code sections 3750(d), 3750(g),
5 3752 [substantially related conviction] and CCR 1399.370(a) and (c).

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters
8 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

9 1. Denying the application of Scott David Munson for a Respiratory
10 Care Practitioner License;

11 2. Directing Scott David Munson to pay the Respiratory Care Board of
12 California the costs of the investigation and enforcement of this case, and if placed on
13 probation, the costs of probation monitoring;

14 3. Taking such other and further action as deemed necessary and
15 proper.

16 DATED: January 13, 2009

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19 Original signed by Liane Zimmerman for:
20 STEPHANIE NUNEZ
21 Executive Officer
22 Respiratory Care Board of California
23 Department of Consumer Affairs
24 State of California
25 Complainant

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